



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
15 Flanders Memorial Road
P.O. Box 190
Weare, NH 03281
Phone: (603) 529-2250
Fax: (603) 529-4554

Naomi L. Bolton
Land Use Coordinator

Office Hours:
Monday
thru
Friday
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT
MINUTES
MARCH 4, 2008
(Approved as amended 4/1/08)**

PRESENT: Ian McSweeney, Vice Chairman; Forrest Esenwine; Elwood Stagakis, Alternate; Malcolm Wright, Alternate; Naomi L. Bolton, Land Use Coordinator.

GUESTS: Jerry Shinn; Mike Dahlberg, LLS; Ginger Esenwine

I. INTRODUCTION:

Vice Chairman Ian McSweeney called this meeting to order at 7:40 PM and asked the board members present to introduce themselves. Vice Chairman McSweeney explained to those present the way by which the board conducts business. Vice Chairman McSweeney appointed Malcolm Wright and Elwood Stagakis as voting members. Elwood Stagakis stated that he would prefer not to sit on this case as he has had unfavorable dealings with the applicant but felt that he can sit as a voting member without prejudice. Vice Chairman McSweeney wanted to disclose that he also has had prior business engagements with the applicant but could also sit without prejudice. Vice Chairman McSweeney informed Mr. Shinn that the choice was his if he wanted both board members to sit as voting members or to have them not be voting members. Mr. Shinn stated that he didn't have an issue with both members sitting on the board.

II. ADMINISTRATIVE ITEMS:

There were no administrative items for this evening and the board went right to the hearings.

III. PUBLIC HEARINGS:

Case #0208 S.W. Realty Trust (Woodbury's Garden Center)
Variance, Article 24, Section 24.6.2
Special Exception, Article 24, Section 24.8
Applicant is requesting permission to allow a proposed checkout sales/display stand to be built in the 30 foot setback and to allow the expansion of the current parking area for 22 vehicles.
Tax Map 408-172 South Stark Highway

Mike Dahlberg stated that he would like to first explain the site plan, then proceed to the special exception application and then onto the variance application. Mr. Dahlberg explained that his client has been approved by the Planning Board for a site plan for Woodbury's Garden Center at Country 3 Corners. The use occurs there now, but they would just like to organize the use. Parking is allowed in the front setback by special exception. The parking lot exists today they are just increasing the size to accommodate customers as well as widening the entrance and realigning it to be directly across from Route 149. They have filed for a State of NH driveway permit. The second part is the variance to build a 20' x 20' checkout sales/display stand within the side setback. The foremost reason to move the checkout stand is to see who comes and goes for proper business. In January the Planning Board approved the site plan with the checkout in a compliant location. For the purpose of this application as well as a condition of approval from the Planning Board lots 172 and 173 have been consolidated.

Forrest Esenwine stated that he has a problem with the existing building being over the lot line and even though it is currently the same owner they are individual lots and can be sold individually. He has a problem with that because even though the existing building is over the line which makes it pre-existing non-conforming, this application would make it more non-conforming.

Mr. Dahlberg responded that the checkout stand is not going to be straddling the lot line. The existing building is not being touched. The lots need to be kept individual so that the access rights are not lost. Mr. Dahlberg stated that if they do construct the stand in that location, they do it at their peril. If they were to sell that property the lots would most likely be conveyed together because he didn't think any mortgage company would allow the lot to be sold that contained a building that straddled over to another lot. The building is going to be on blocks and not a permanent foundation. There will be electricity and a computer line.

Forrest Esenwine stated that knowing that the stand is not going to be put on a permanent foundation but on blocks, that makes a difference to him. It is a seasonal business. There will be no foundation or slab. He didn't have an issue with this due to the fact that it is not a permanent structure and will be placed there for this business only. The board asked if the applicant would be willing for a condition that if the business was to close the building would have to be moved. The applicant responded that that would be fine.

Mr. Dahlberg then addressed the 7 conditions of the special exception as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: The site is currently used for employee and equipment parking and storage. The existing use and proposed use is allowed within the Commercial Zone. The site was formerly used for building material storage. The proposed parking area will be an improvement over the existing situation. The space provides a

safe place for vehicles to park and maintain a safe distance from the actual lumber yard.

2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: The proposed parking area is designed in an orderly manner which provides adequate turning movements. The associated grading and landscaping should be a marked improvement over the existing conditions. The edge of the proposed parking area is further away from the road and the nearest abutter by approximately five (5) feet. This is an improvement over the existing condition.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: There shall be NO cross traffic between the lumber yard and the Garden Center. The proposed entrance is under the control of the State of NH Department of Transportation – District #5 and has been designed according to their requirements. The driveway permit approval has been submitted and is pending.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: The proposed Garden Center is accessed off of NH Route 77, a State Highway. NO services by the Town of Weare Highway Department should be required as a result of this proposal.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: The proposed parking area is in accordance with the anticipated needs of the applicant. Neither the Zoning Ordinance nor the Site Plan Regulations have parking requirements. The Site Plan Regulations leave it to the applicant to demonstrate their parking needs. (The Site Plan has been approved by the Town of Weare Planning Board.)
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: There is an existing fence that provides a certain amount of buffer to the closest neighbor across Route 77. There shall be a loam and seed area between the edge of the proposed parking area and the closest edge of Route 77. The applicant does not propose to plant any shrubs or trees between the parking area and Route 77 due to site distance restrictions and snow removal and storage in the winter months.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section:

Forrest Esenwine stated that in all reality this type of business is not going to create noise, dirt, dust and he didn't feel that this type of business would need any type of buffer there.

Approving Abutters: NONE
Disapproving Abutters: NONE

Public At Large: NONE
Other Boards: NONE

Vice Chairman McSweeney closed this hearing to the public at 8:15 PM.

SPECIAL EXCEPTION CASE DECISION: Condition #1: Forrest Esenwine moved to accept condition #1; Elwood Stagakis seconded the motion. Discussion: none. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis) and 0 opposed. Condition #2: Forrest Esenwine moved to accept condition #2; Elwood Stagakis seconded the motion. Discussion: none. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis). Condition #3: Forrest Esenwine moved to accept condition #3; Elwood Stagakis seconded the motion. Discussion: none. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis) and 0 opposed. Condition #4: Forrest Esenwine moved to accept condition #4; Elwood Stagakis seconded the motion. Discussion: none. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis) and 0 opposed. Condition #5: Forrest Esenwine moved to accept condition #5; Elwood Stagakis seconded the motion. Discussion: none. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis) and 0 opposed. Condition #6: Forrest Esenwine moved to accept condition #6; Elwood Stagakis seconded the motion. Discussion: none. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis) and 0 opposed. Condition #7: Forrest Esenwine stated that what they are doing and how it was presented to the board, he felt there was no need of conditions to this part of the application. Forrest Esenwine moved to grant the special exception for case #0208 as presented; Elwood Stagakis seconded the motion. Discussion: none. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis) and 0 opposed.

Mr. Dahlberg then briefly explained the request for a variance. The structure as previously mentioned is not a permanent building. They feel that this placement would be a good business practice to be in this location so that the products don't leave without being paid for. This layout also provides them a large contiguous space for the green house and the checkout stand. The other security issue they had with the previously approved location is that three sides of the shed are in the open and it is just not good business practice. Also the person working the checkout could get side tracked waiting on a customer and people could walk away with products because the 3 sides are out in the open.

Mr. Dahlberg then went through the five (5) pointes of hardships for the variance application as follows:

1. There will not be a diminution of value surrounding properties as a result of the granting of this variance because: The existing lumber storage shed already crosses the side lot line. Said existing storage shed was built in the mid-80's before the Zoning ordinance was put in place and therefore is grandfathered as an existing structure. The proposed new Garden Shed will be an extension of the existing building. Said change will not have any diminution in the value of surrounding properties. The construction of

the Garden Center should aesthetically enhance this portion of the property and not adversely affect the abutters. The Garden Center should provide a good buffer from the lumber yard and the abutters.

2. That the granting of a variance will not be contrary to the public interest because: As part of the work being done for Woodbury's Garden Center, we have significantly cleaned up the back corner of the lot at Country 3 Corners. The effort brings a new line of business, a garden center, to the Town of Weare. All the lots in question are owned by the same owner. The proposed use is a permitted use and is consistent with the current business that occurs on-site. The proposed use is a logical expansion of one of the existing business segments.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: The Garden Shed will be an extension of the pre-existing lumber storage shed. The end of the lumber storage shed is within the thirty (30) foot setback from the side property line. In order to attach to the existing lumber storage shed, the new garden shed must be within the required thirty (30) ft. setback. The proposed checkout stand location allows for a more uniform business practice and site layout.
 - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: Placement of the new Garden Shed as an extension of the existing building is the optimal use for the property because: 1) it keeps the building structures close together, 2) utilities in existing building are easily connected, 3) the thirty (30) ft. setback would mean a separate building structure in the middle to the corner lot, thus segmenting the sales and display area making it difficult to conduct business in a safe and proper manner.
4. That through the granting relief by variance substantial justice will be done because: It would allow the expansion of a current segment of their business in the best manner possible. The placement of the checkout stand allows for the orderly operation of the business and would allow the operators to control and observe customers in a safe and orderly manner.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: The spirit of the ordinance is to prevent an abutting property owner from infringing on a neighbors property. The lots in question are owned by the same entity and have been historically treated as a single entity, also the use is a permitted use and the proposed

use is a logical and necessary expansion of a current business line. The growing population of Weare can utilize this business for their benefit. Weare residents currently have to leave town to gain access to this type of business, this expansion would be benefit the residents of Weare.

Approving Abutters: NONE
Disapproving Abutters: NONE
Public At Large: NONE
Other Boards: NONE

Vice Chairman McSweeney closed this hearing at 8:40 PM.

VARIANCE CASE DECISIONS: Point #1: Forrest Esenwine moved to accept point #1; Malcolm Wright seconded the motion. Discussion: none. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis) and 0 opposed. Point #2: Forrest Esenwine moved to accept point #2; Malcolm Wright seconded the motion. Discussion: none. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis) and 0 opposed. Point # 3aa: Forrest Esenwine moved to accept point #3aa; Malcolm Wright seconded the motion. Discussion: Mr. Stagakis stated that during the discussion the shed was to be non-permanent and he didn't see that in the written response. He wondered if we could vote on it because it is not written on the application. Mr. Esenwine responded by adding that the written testimony is only part of the application and any verbal testimony is to be considered as well. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis) and 0 opposed. Point #3bb: Forrest Esenwine moved to accept point #3bb; Elwood Stagakis seconded the motion. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis) and 0 opposed. Point #4: Forrest Esenwine moved to accept point #4 with the removal of the first sentence as the applicant has agreed to do; Malcolm Wright seconded the motion. Discussion: Mr. Stagakis stated that he would like to see both the first and second sentence removed. The board felt that the hearing was closed and the second sentence could not be removed. Vote: 3 in favor (Wright, McSweeney and Esenwine) and 1 opposed (Stagakis). Point #5: Forrest Esenwine moved to accept point #5; Malcolm Wright seconded the motion. Discussion: Mr. Stagakis stated that he would ask that the first sentence be stricken from this response as well. The board once again felt that it should have been discussed while the hearing was open. Mr. Esenwine stated that he felt the sentence was subjective and the spirit is to allow for orderly growth, which this proposal does. Vote: 3 in favor (Wright, McSweeney and Esenwine) and 1 opposed (Stagakis). Forrest Esenwine moved to grant the variance for Case #0208 with the following conditions:

1. The proposed checkout sales/display stand is to be no larger than shown on the plan.
2. The proposed checkout sales/display stand is to be a non-permanent structure constructed on blocks (4"x 8" x 16")
3. The proposed checkout sales/display stand is to be placed no closer than 36" from the property line as indicated on the plan.

Elwood Stagakis seconded the motion. Vote: 4 in favor (Wright, McSweeney, Esenwine and Stagakis).

IV: OTHER BUSINESS:

NOVEMBER 6, 2007 MINUTES: Forrest Esenwine moved to accept the November 6, 2007 minutes as amended; Elwood Stagakis seconded the motion, all in favor.

V. ADJOURNMENT:

As there was no further business to come before the board, Forrest Esenwine moved to adjourn the meeting at 9:00 PM; Malcolm Wright seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator